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7 BEFORE THE INSURANCE COMMISSIONER
8 OF THE STATE OF WASHINGTON

9 In the Matter of the Application
10 regarding the Conversion and
11 Acquisition of Control of Premera Blue
12 Cross and its Affiliates.

No. G 02-45

EMERGENCY MOTION REGARDING
PUBLICATION OF PREMERA
EXPERT REPORTS AND OIC STAFF
CONSULTANTS' REPORTS ON THE
OIC WEBSITE

13
14 REQUEST FOR TELEPHONE
HEARING ON November 21, 2003

15 Introduction

16 Premera brings this motion to obtain an order for the simultaneous publication of
17 Premera's expert reports on the OIC website if the OIC consultants' reports are published
18 there today.

19 Christina Buesch's email this afternoon to Premera's counsel, Tom Kelly, states
20 that the OIC consultants' reports will be published on the OIC website today. It also
21 contemplates publication of the Premera expert reports but only at a future date. Carol
22 Sureau's letter later this afternoon to Mr. Kelly reiterates that the OIC is not planning to
23 simultaneously publish the two sets of reports.

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25 EMERGENCY MOTION REGARDING
PUBLICATION OF PREMERA'S EXPERT
REPORTS AND OIC STAFF CONSULTANTS'
REPORTS ON THE OIC WEBSITE - 1

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Such a non-simultaneous publication approach is unfair, unnecessary and prejudicial to providing the public with full and complete information about the conversion. Either both sides should have their reports published on the same day on the OIC website or there should be no publication of any of the reports on the OIC website until such time as both sets can be published.

Argument

1. Both sets of reports are in a form that they can be published simultaneously today on the OIC website.

Premiera has already provided the Commissioner with its expert reports in a form in which they can be published on the website. Hence, there is no reason why they cannot be published today with any publication of the OIC Staff consultants' reports on the OIC website.

The purpose of the redactions is to assure that Premera's confidential proprietary information not be disclosed. The purpose of Judge Finkle's review is to make sure that Premera's redactions are appropriate and necessary.

If Judge Finkle determines that there are additional portions of Premera's reports that should be unredacted and disclosed to the public, there is no reason why a revised version of the reports, reflecting those rulings, cannot be posted on the website at that time.

Ms. Sureau states that she is concerned about confusion due to “possible seriatim postings” on the OIC website, since Judge Finkle has yet to rule on Premera’s expert report redactions. However, that exact same issue applies to the OIC consultants’ reports, since both the OIC Staff and the Intervenors have appealed Judge Finkle’s redaction rulings on those reports.

EMERGENCY MOTION REGARDING
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- 1 2. The Commissioner should not publish the OIC consultants' reports on the
2 OIC website without simultaneously publishing Premera's expert reports.

3 It is unfair and prejudicial, both to Premera and to the public, for the
4 Commissioner to only publish one version of the merits of the conversion question.

5 Yesterday's release of the OIC consultants' reports to one newspaper and today's
6 newspaper reporting on those reports demonstrates the problem. Because the public may
7 not pick up the subtlety of the distinction between roles of the OIC Staff (as a party
8 arguing one side of the issue) and of the Commissioner (as a neutral and impartial judge),
9 it appears from reading the newspaper account that it is the Commissioner himself who
10 has already come to the conclusion that he will not approve the conversion. In the
11 alternative, an equally incorrect impression has now been made that the released reports
12 are somehow neutral reports, for which greater weight should be given. Nothing, of
13 course, could be further from the truth.

14 While the harm to Premera caused by yesterday's leak is irreparable, it will only
15 be exacerbated should this one-sided and prejudicial approach be continued and solidified
16 by having only one version of the story on the OIC's official website.¹

17 Leaving aside the question of public perception, Premera also has fundamental
18 fairness and due process concerns with any delay in the publication of its reports on the
19 OIC website. After all, it is Premera's proprietary information that is at stake. Premera is
20 satisfied with the release of its reports with their current redactions in the form delivered
21 to the OIC yesterday by Premera. If Judge Finkle rules that additional portions of the

22 ¹ Ms. Sureau's letter states that the delivery of the document to The Seattle Times was
23 responsive to a Public Disclosure Act request. We respectfully submit that the disclosure
24 to the Times does not appear to have followed the formalities of a Public Disclosure Act
25 production. Moreover, to the best of our knowledge, only one of the seven OIC
 consultant reports was in fact delivered. We continue to ask that the Commissioner
 authorize an inquiry into the circumstances of the delivery of the report to the press.

1 reports must be revealed and if his decision is upheld, then those additional portions can
2 easily be added to the website.

3 3. Failure to have simultaneous publication exacerbates the harms caused by
4 the prior premature release of the OIC consultants' reports.

5 If the Commissioner were to authorize a one-sided publication policy -- that is, to
6 only permit the publication at this time of the OIC consultants' reports on the OIC website
7 -- it would make it appear that the Commissioner is somehow condoning or prejudging
8 the propriety of yesterday's incident with the press.

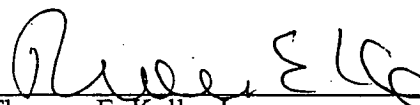
9 Now, even if the Commissioner would have preferred to have Judge Finkle
10 complete his review of the redactions of Premera's reports before publishing those reports
11 on the website, those preferences must defer to the need to try to undo the harm that has
12 occurred. Publishing Premera's expert reports simultaneously will help address the
13 appearance of fairness issues in the handling of this matter.

14 Requested Relief

15 Premera therefore requests that the Commissioner publish Premera's expert reports
16 on the OIC website today, if the OIC consultants' reports are published there today.

17 DATED this 21st day of November, 2003.

18 PRESTON GATES & ELLIS LLP

19
20 By 
21 Thomas E. Kelly, Jr., WSBA # 05690
22 Robert B. Mitchell, WSBA # 10874
23 Attorneys for Applicant PREMERA
24 and Premera Blue Cross

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